

REMARKS

Applicant respectfully requests reconsideration in light of the remarks which follow.

Claims 1-17 are before the Examiner. No claims have been amended.

Acknowledgment of the claim for priority under 35 USC 119 and receipt of the priority documents is noted with appreciation.

The initialed copy of the PTO-1449 form has been received.

It is queried if the formal drawings filed on November 18, 2003 were accepted.

Allowable Subject Matter

It is noted with appreciation that claims 4-8, 12-14 were deemed by Examiner to be allowable if rewritten in independent form including all of the limitations of the base claim. It is noted that these claims currently are objected to as being dependent upon a rejected base claim. It is respectfully requested that this objection be held in abeyance pending a fuller consideration of Applicants' arguments, which may render the objection mute.

Claim Rejections - 35 U.S.C. 103(a)

Claims 1-3, 9, 10, 15-17 are rejected under 35 U.S.C. 1103(a) as being unpatentable over Taelman (WO 97/10991) in view of Berge (USP 2,844,145 and Diggs (USP 4,022,201). Applicants respectfully traverse.

It is stated in the Office Action that it would have been obvious to modify the shape of the air tank of Taelman to be toroidal ("ring-shaped") to 1) attain a nautical shape thereby making it easier to notice on the surface of the water as a piece of underwater breathing equipment (Note claim 11 directed to a diving pendant.) and 2) make the air tank easier to carry for a diver (See Berge).

The Examiner's attention is directed to the figures for a visualization of the claimed system and clarification as to the positioning of the toroidal tank within the housing. In short, the toroidal-shaped tank would not be evident to the casual observer when viewing the claimed system floating on a body of water. Since only the housing will be seen. Further, please note that the claimed system is not to be carried (worn) by the diver in the sense of a SCUBA device or the Berge system. The claimed system, like that of the primary reference, floats on the surface and is only connected to the diver only through the air supply hose (7). The diver is not directly encumbered by a tank.

It should be noted that underwater breathing equipment (air tank) is commonly cylindrical in shape, as shown in Taelman. Therefore, a skilled person would need to be motivated and guided to employ a toroidal shaped tank rather than the more common cylindrical one. Further, it is not clear from the references why one would modify the Taelman device to employ a toroidal shaped tank. Further, there is no apparent problem in Taelman suggesting the need to substitute a different tank shape. Berge is not directed to a floating tank system link that of the primary reference but rather is directed to a SCUBA-like device (The Berge air tank is configured to be worn by the diver rather than to float on the water surface. Berge does not suggest that the toroidal tank is capable of floating, as opposed to being worn by a diver.). The motivation suggested in the Action for making the substitution is predicated on the notion that one would be alerted to the presence of a diver(s) upon seeing a less common tank shape, rather than a more common one floating on the surface of a body of water. This is not convincing, especially when one considers that the

claimed tank is not seen. Only the housing is. Accordingly, the stated rationale boils down to "obvious to try" one, which is not statutory obviousness.

Finally, the Examiner relies on Diggs to show that it is known to provide the breathing apparatus of Taelman with a housing having a storage compartment and to provide means for deploying at least one air-line from said compartment when the system is used. This is not the case. Diggs does not teach a compartment. Rather, Diggs discloses a floating winch. It is submitted that a skilled person would lead by this teaching to simply mount the winch of Diggs on top of the breathing apparatus of Taelman, rather than provide Taelman with a housing having a storage compartment from which the air-line may be deployed. The compartment concept is absent from the references. Also, neither the references nor the Action state a problem latent in Taelman that suggests its combination with Diggs. This reference combination appears to be assembled in hindsight.

Accordingly, a skilled person would not arrive at the present invention defined in claim 1 as a result of combining the disclosure in these three documents. A prima facie case of obviousness has not been established. Withdrawal of the rejection is respectfully requested.

Claim 11 is rejected under 35 U.S.C. 1103(a) as being unpatentable over Taelman in view of Berge ,844,145 and Diggs (USP 4,022,201) as applied to claims 1-3, 9, 10, 15-17 above and further in view of Miller ('849). Applicants respectfully traverse.

The teachings of Miller ('849) have been considered. The Examiner's characterization of the Miller teachings is accurate. However, it is respectfully submitted that these teaching do not remedy the deficiencies of the Taelman, Berge and Diggs combination discussed above.

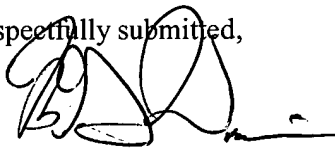
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Accordingly for the reasons discussed above, it is respectfully submitted that a proper prima facie case of obviousness as to the rejected claims has not been established, with or without the consideration of the Miller teachings. Withdrawal of the rejection of claim 11 is respectfully requested.

If the Examiner believes, for any reasons, that further communication will expedite prosecution of this application the Examiner is invited to telephone the undersigned at the number provided.

Applicant believes there are no additional fees associated with this reply other than those indicated. However, if this is incorrect, the Commissioner is authorized to charge any fees which may be required for this paper to Deposit Account No. 22-0261

Date: 12/30/04

Respectfully submitted,


Thomas G. Wiseman
Registration No. 35,046
VENABLE
P.O. Box 34385
Washington, D.C. 20043-9998
Telephone: (202) 344-4800
Telefax : (202) 344-8300